



2007 Policy

Tompkins County Consortium

**FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION**

DRUG AND ALCOHOL TESTING PROGRAM POLICY

STATEMENT OF ACCEPTANCE:

This policy has been approved by TOWN of ULYSSES
(name of Town, Village, or City)
this 12th day of December, 2006 in compliance with the US Department of
Transportation & Federal Motor Carrier Safety Administration regulations 49 CFR
Part 40 and 382. Adoption of this policy verifies that the municipality desires to
continue as a member of the Tompkins County Drug and Alcohol Testing
Consortium through December 31, 2007.

Doug Austre / Town Supervisor
(print name) (title)
Doug Austre
(signature)
12/12/06
(date)

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Tompkins County Drug and Alcohol Testing Consortium
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) SUBSTANCE
ABUSE POLICY
(For Commercial Driver's License (CDL) Employees)

1.0 STATEMENT OF PURPOSE

Tompkins County Drug and Alcohol Consortium, comprised of the Tompkins County Highway Division, Tompkins County Airport Division, the Towns of Caroline, Danby, Dryden, Enfield, Groton, Ithaca, Lansing, Newfield, and Ulysses, the Villages of Cayuga Heights, Dryden, Groton, and Trumansburg, and the City of Ithaca, has established this substance abuse policy in accordance with the Omnibus Transportation Employee Testing Act of 1991, the Department of Transportation (DOT), and the Federal Motor Carrier Safety Administration (FMCSA) Regulations (49 CFR Parts 40 and 382). These regulations require that drug and alcohol testing be performed on employees who perform safety-sensitive functions as defined under these mandated statutes. These regulations further protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure that the test results are attributed to the correct employee. Non-compliance with this policy and/or a violation of the DOT/FMCSA drug and alcohol misuse regulations may result in disciplinary action, up through and including termination.

1.1 TERM:

Adoption of this policy by the Tompkins County Drug and Alcohol Testing Consortium member municipalities listed above indicates that each will abide by this policy and will continue as a consortium member unless otherwise notifying the Tompkins County Drug and Alcohol Testing Consortium Coordinator.

1.2 OBJECTIVES:

- To establish rules and procedures to deter all illegal drug use, and deter on-duty, pre-duty and post accident alcohol use, as well as on-duty alcohol impairment stemming from pre-duty use, for all covered drivers who perform safety sensitive functions,
- To detect and eliminate the possibility that covered drivers will perform safety-sensitive functions after testing positive for alcohol or drugs,
- To comply with applicable Federal and State laws, including the Omnibus Transportation Employee Testing Act of 1991,

- To provide reasonable measures for the early detection of personnel not fit to perform activities within the scope of this policy,
- To maintain a workplace free of drugs and alcohol,
- To inform employees through education, in service training and in any other appropriate forum about illegal drugs and alcohol abuse, their use, possession, distribution and the effects of such substances.

2.0 SCOPE OF POLICY

Commercial Drivers who perform safety sensitive functions are required to submit to drug and alcohol testing in accordance with the DOT/FMCSA regulations (49 CFR Part 40 and 382) that comprise this policy. Furthermore, all applicants who apply for a position that has been designated safety-sensitive are also covered by this DOT/FMCSA policy.

2.1 THREE YEAR DOT SUBSTANCE ABUSE BACKGROUND CHECK

The employing municipality shall obtain information on an applicant's substance abuse history within the preceding three years that are maintained by the covered applicant's previous transportation employer(s) pursuant to these regulations (See APPENDIX D). Each applicant shall also be required to notify the municipality if they have tested positive on a pre-employment test for a company that did not hire them.

The employing municipality reserves the right to re-evaluate the employees job status based on the information received from the background checks.

3.0 COVERED CATEGORIES OF EMPLOYEES

The FMCSA policy applies to all employees required to possess a Commercial Drivers License (CDL) who operate a commercial motor vehicle in commerce in any State, and who are subject to:

- The commercial driver's license requirements of part 383;
- The Licencia Federal de Conductor (Mexico) requirements; or
- The commercial driver's license requirements of the Canadian National Safety Code.

A safety sensitive function as defined by the FMCSA includes all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- All time at company or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by company;
- All time inspecting equipment as required by 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and,
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

4.0 PROHIBITED CONDUCT

A. *Alcohol:*

1. A covered employee is required to submit to an alcohol test in the following circumstances:
 - Random;
 - Post Accident;
 - Reasonable suspicion;
 - Return to duty;
 - Follow Up
2. Covered employees are prohibited from using alcohol if:
 - the employee is performing;
 - the employee is about to perform;
 - the employee is immediately available to perform;

a Safety-sensitive function. A covered employee who performs a safety sensitive function is prohibited from using alcohol within four (4) hours prior to performing any safety-sensitive duty. A covered employee is subject to random and reasonable suspicion testing for alcohol just before

performing a safety sensitive function, during the performance of a safety sensitive function, or just after ceasing the performance of a safety sensitive function.

3. Covered employees are prohibited from reporting for duty, from performing a safety-sensitive function, and/or continuing to perform a safety-sensitive function with a breath alcohol concentration of 0.04 or greater.
4. Covered employees who are found to have a breath alcohol concentration of 0.02 or greater but less than 0.04 will not perform or continue to perform a safety-sensitive function, until:
 - the employee's breath alcohol concentration measures less than 0.02 on a test given within 24 hours of testing with an alcohol concentration of greater than 0.02 but less than 0.04 or
 - the start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the test.
5. On-call employees are prohibited from using alcohol for the duration of their on-call status. On-call employees will be given an opportunity to acknowledge the use of alcohol at the time that the employee reports for duty and the inability to perform the safety-sensitive function. If the on-call employee acknowledges the use of alcohol, but claims the ability to perform the function, the covered employee is required to take a breath alcohol test prior to performing the safety sensitive function.
6. Covered employees shall not refuse to take a breath alcohol test for any FMCSA mandated test under these provisions. A covered employee that refuses to take any mandated alcohol test under these provisions will be deemed a "Refusal to Test".
7. Covered employees are prohibited from the use of alcohol following an accident when the employee is required to take a post-accident alcohol test within eight (8) hours following the accident or until the employee undergoes a post-accident alcohol test, whichever occurs first. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
8. Covered employees are prohibited from the possession or use of alcohol on any employer premises/property.

9. The employing municipality, having actual knowledge that a covered employee is using alcohol while performing or has used alcohol within four (4) hours of performing a safety-sensitive functions, shall not permit the employee to perform or continue to perform safety-sensitive functions.

B. Drugs:

1. A covered employee is required to submit for a drug test in the following circumstances:
 - Pre-employment.
 - Random;
 - Post Accident;
 - Reasonable suspicion;
 - Return to duty; and
 - Follow Up

An applicant who applies for a safety-sensitive position must undergo a pre-employment drug test prior to the first time they perform safety sensitive duties.

2. Covered employees are prohibited at all times from the use of the five prohibited drugs and shall be randomly selected at any time while on duty to submit to drug testing for the following drugs and drug metabolites:
 - Marijuana;
 - Cocaine;
 - Opiates
 - Amphetamines; and
 - Phencyclidine (PCP).
3. Covered employees shall not refuse to take a drug test for any FMCSA mandated test under these provisions. A refusal to test includes providing a specimen that is adulterated or substituted. A covered employee who refuses to take any mandated drug test under these provisions will be deemed a "Refusal to Test".
4. Covered employees who are required to submit to post accident drug testing will remain readily available for a period of 32 hours after an accident or until the drug test is administered, whichever comes first. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident.
5. Covered employees are prohibited from the manufacture, distribution, dispensing, and possession of controlled substances at all times.

6. Covered employees are prohibited from the use of any illegal controlled substance regardless of the source.

5.0 TESTING PROCEDURES

A. *Alcohol:*

An evidential breath-testing device (EBT) approved by the National Highway Traffic Safety Administration (NHTSA) is utilized to conduct alcohol screening and confirmation tests in accordance with DOT regulation. A breath alcohol test is conducted by a Certified Breath Alcohol Technician (BAT) at a collection site meeting DOT requirements. The breath alcohol testing must conform to 49 CFR 40. A DOT alcohol-testing form (ATF) is completed and the results recorded on that form according to DOT regulations.

Up to two breath tests are required for a DOT test. The first test is considered the initial screening test. If a breath alcohol concentration is below 0.02, no further testing is required. If a breath alcohol concentration is 0.02 or greater on the first test, a confirmation test (second breath test) is required. When a confirmation test is required, any actions taken will be based on the confirmation test result.

The inability to provide adequate breath for the alcohol test (shy lung) will result in a refusal to test if a physician cannot verify that a legitimate medical condition existed.

B. *Drugs:*

The drug test, under DOT regulations, consists of a urine drug collection analyzed for the presence of the five identified illegal drugs and drug metabolites. Urine analysis also includes validity testing for chemicals used in adulterating urine or for the detection of substituted urine.

Urine specimen collection and urine analysis shall be conducted in accordance with the procedures delineated in 49 CFR 40.

The first part of the process is the urine drug collection at a collection site meeting the DOT requirements. A split specimen is collected; that is, two bottles are generated during the collection process – primary and split. The specimens are sent to a Department of Health and Human Services (DHHS) certified laboratory that ensures that the testing is scientifically valid for ph, creatinine, specific gravity, and various adulterants. The laboratory will test all primary specimens for dilution, substitution, and adulteration. If the initial screening is positive for one or more of the five identified substances, a confirmation test is

then performed for each identified drug utilizing gas chromatography/mass spectrometry (GC/MS) analysis.

A certified Medical Review Officer (MRO) conducts the second part of the process. For positive test results and specimens identified as "substituted/adulterated", the MRO will interview the employee and review the test before making a final confirmation. A covered employee can challenge an MRO confirmed positive or substituted/adulterated test result by requesting that the split bottle be tested. The employee must make the request for a split test directly to the MRO within 72 hours of the time of notification of a positive test or refusal to test because of adulteration or substitution.

The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT/FMCSA drug-testing program. The CCF must be a five-part carbonless manifold form that details each step of the collection, verification, and copy distribution process. The CCF can only be modified in certain circumstances pursuant to 49 CFR Part 40.45 (c). Under no circumstances may the CCF transmit any employee personal identifying information other than the social security number or employee ID number to the laboratory.

The inability to provide a urine specimen (shy bladder) will result in a refusal to test if a physician cannot verify that a legitimate medical condition existed.

5.1 REQUIRED TEST TYPES

A. Pre-employment (drug test only):

1. An applicant who is applying for employment to a safety sensitive position must pass DOT pre-employment drug test with verified negative results.
2. A copy of the Notice to Applicant form is attached to and part of this policy (See Appendix E) and a copy is to be provided to all applicants for CDL required positions.
3. If the applicant receives a verified positive test result, employment in the safety-sensitive position shall be denied.
4. An applicant or covered employee whose pre-employment drug test is cancelled is required to take another pre-employment drug test with a verified negative result prior to commencing any safety-sensitive function.
5. An employee who is re-assigned, promoted, or transferred to a safety-sensitive position must pass DOT pre-employment drug and alcohol tests with verified negative results prior to starting the safety-sensitive position. If the employee receives a verified positive test result, the employee may not be re-assigned, promoted, or transferred to the position and the employing municipality shall take the appropriate action as prescribed

under the municipality's Policy for "Consequences of a Positive Drug Test".

6. An applicant or covered employee who has previously failed a DOT drug or alcohol test must have evidence of successfully completing the DOT referral, evaluation and treatment plan prior to commencing a safety-sensitive position.
7. A covered employee that has not performed a safety sensitive function for a duration of 30 consecutive days or more, and has been removed from the safety-sensitive random pool during that time, must submit to a DOT pre-employment drug test with a verified negative result prior to commencing their safety-sensitive functions.

B. Reasonable Suspicion Testing

A covered employee will be subject to reasonable suspicion drug use and alcohol misuse testing when the employer has a reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

1. A member municipality's Supervisor(s), trained in detecting the signs and symptoms of drug use and alcohol misuse, must determine that reasonable suspicion exists and shall be based on specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.
2. The supervisor can direct a covered employee to undergo reasonable suspicion testing for alcohol when the observations (as defined in #1 above) are made while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

C. Post-Accident Testing:

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road, the employing municipality shall test for alcohol for each of its surviving drivers:

- Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

- One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

The following table notes when a post-accident test will be conducted by the employing municipality:

<u>Type of accident involved</u>	<u>Citation issued to the CMV driver</u>	<u>Test must be performed by COMPANY</u>
Human fatality	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

If a post-accident alcohol test is not administered within two hours following the accident, the employing municipality will document the reasons the test was not promptly administered. If a test required is not administered within eight hours following the accident, the employing municipality shall cease attempts to administer the alcohol test and will document why the test was not completed.

If a post accident drug test not administered within 32 hours following the accident, the employing municipality will cease attempts to administer a controlled substances test, and document the reason why the test was not completed.

A CDL driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employing municipality to have refused to submit to testing. Nothing shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

The employing municipality will provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of the policy.

The employing municipality may obtain and use the results of a urine and breath/blood tests for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test (s).

Post accident testing will not be conducted in the following situations:

- An occurrence involving only boarding or alighting from a stationary motor vehicle; or
- An occurrence involving only the loading or unloading of cargo; or
- An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 571.3) by the municipality unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 177.823.
- In either a fatal or non-fatal accident, there is nothing that shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

D. Random Testing:

Federal Motor Carrier Safety Administration regulations require that all covered employees be subject to random drug use and alcohol misuse testing under this policy.

The selection of employees for random drug and alcohol testing (50% of the drug and 10% of the alcohol test pool, respectively) shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

Random drug and alcohol tests will be unannounced and immediate, and the dates for administering random tests will be spread reasonably throughout the calendar year. Random testing will be conducted on all days and hours during the time that safety-sensitive functions are performed.

E. Return-To-Duty Testing:

For a covered-employee who refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employing municipality will require that the employee pass a drug and/or alcohol test (pursuant to procedures outlined in 49 CFR Part 40, Subpart O) with a verified negative result before returning to duty to perform a safety-sensitive function.

(See Section 6.0 for Return to Work Procedure)

F. Follow Up Testing:

A covered employee will be subject to follow up testing who returns to duty as specified in 49 CFR Part 40, Subpart O).

G. Refusal to Test:

A covered employee who refuses to submit to DOT/FMCSA drug or alcohol testing as required by DOT/FMCSA regulations shall be prohibited from performing or continuing to perform safety-sensitive functions. A refusal to submit to drug or alcohol testing constitutes a verified positive drug or alcohol test result.

Under the DOT/FMCSA regulations, a covered employee is subject to disciplinary action in the event that he/she refuses to take a DOT/FMCSA drug or alcohol test. A refusal to test for any non-DOT drug or alcohol test administered by the employing municipality does not constitute a refusal to test under the DOT/FMCSA regulations. Any conduct or behavior as defined in the following list constitutes a refusal to test under DOT/FMCSA regulations and will be deemed a verified positive drug or alcohol test when the covered employee:

- Fails to appear for any test (except a pre-employment test) within 60 minutes of notification that he/she has been selected for a DOT/FMCSA drug and/or alcohol test.
- Failure to remain at the testing site until the testing process is complete; an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- Fails to provide a urine specimen for any drug test or an adequate amount of breath for any alcohol test required by this part or DOT agency regulations; an employee who does not provide a urine specimen and/or an adequate amount of breath because he/she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
- Fails to permit the observation or monitoring of a specimen collection in the case of a directly observed or monitored drug test;
- Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails or declines to take a second drug test that the employing municipality or the collector has directed the covered employee to take;
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employing municipality DER under 49 CFR Part 40.193(d). In the case of a pre-employment drug test, the covered employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;

- Fails to undergo a medical examination or evaluation, as directed by the employing municipality as part of the insufficient breath procedures outlined at 49 CFR Part 40.265(c);
- Fails to sign the certification at Step 2 of the ATF;
- Fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or
- If the MRO reports that you have a verified adulterated or substituted test result.

6.0 RETURNING AN EMPLOYEE TO WORK

After receiving a verified positive drug test result, a confirmed alcohol test result of 0.04 or greater, or a refusal to test, a covered CDL employee will be referred to a Substance Abuse Professional who will conduct a face-to-face evaluation and recommend education/treatment. A return-to-duty test(s) will be required for any covered employee who is returning to duty after successfully completing the treatment plan by the Substance Abuse Professional (SAP). The covered employee must have a written release from the SAP and a return-to-duty verified negative test result prior to returning to their safety-sensitive position. The return to duty process shall follow the procedures as outlined in 49 CFR Part 40.

6.1 FOLLOW UP TESTING

The employing municipality shall conduct follow up testing of each covered employee who returns to duty, as specified in 49 CFR Part 40 and prescribed by the SAP. Follow up testing will include a minimum of six tests in the first 12 months after returning to duty. Additional may tests may be required up to a maximum of 60 months

7.0 CONSEQUENCES

A covered driver shall not perform safety sensitive functions, including driving a commercial motor vehicle, if the covered driver has engaged in conduct prohibited by this policy or violated an alcohol or drug rule of any DOT agency.

The employing municipality:

- Will not permit any driver to perform safety sensitive functions, if said driver has tested positive for alcohol and/or drugs.
- Will not permit any covered driver to have a blood alcohol concentration of at least 0.02 and less than 0.04 to perform safety sensitive functions for 24 hours following the administration of the test.

The consequences for violating this policy will include:

- Suspension from the performance of safety sensitive functions,
- Referral to a substance abuse professional (SAP),
- The requirement that a SAP certify the covered driver's completion of a prescribed substance abuse program (treatment/education),

- The requirement that the covered driver pass an alcohol test with a BAC of less than 0.02 or a controlled substance test with a negative test result (Return to Duty Test) prior to the return to work and the performance of safety sensitive functions.
- The requirement that the employee complete at least six (6) follow-up tests in the first twelve (12) months after returning to duty. (Note: this is a minimum – the SAP may prescribe additional tests up to sixty (60) months.)

Follow up testing will be required as delineated in Section 6.0. Additionally, the employing municipality reserves the right to take disciplinary action up to and including termination.

The costs associated with follow up testing will be split 50/50. The driver will use available fringe time to cover the absence from duty while follow up testing is being performed.

All employees who test positive will be referred to a SAP. The SAP will coordinate the treatment/education with the municipality's Employee Assistance Program (EAP). Whenever possible, the costs associated with the SAP and EAP should be covered by the employee's medical benefits. Any costs beyond that coverage will be the responsibility of the employee.

7.1 NEGATIVE DILUTE DRUG SPECIMEN

Although a Negative Dilute drug test result is not a violation of US DOT regulations and the employing municipality's policy, the following action will be taken consistent with DOT regulations:

- If an employee's drug test is reported as "negative dilute", the employee will be immediately sent for another drug test. If the second test result is negative dilute, the result will be accepted and no further testing will be performed. This applies to all DOT test categories.

8.0 ADMISSION OF SUBSTANCE ABUSE PRIOR TO NOTIFICATION TO TEST

In accordance with and subject to other applicable policies and procedures. A driver who admits to controlled substance abuse and/or alcohol abuse prior to notification that a random or reasonable suspicion test is required, may avoid termination on the basis of drug and alcohol misuse and allowed the opportunity to reform. Any rehabilitation costs would be paid for by the employing municipality's contract with their EAP, and the employee's health insurance coverage to the extent possible. Any costs beyond that coverage will be the responsibility of the employee.

9.0 TRAINING AND INFORMATION

The Tompkins County Drug and Alcohol Testing Consortium will:

- Provide educational materials, employee training, and supervisor training to the member municipalities that explains the requirements of this policy and the municipality's policies and procedures with respect to meeting the FMCSA alcohol and drug testing requirements. (note: expenses for employee training and supervisor training will be split amongst the member municipalities that send individuals to the training sessions.)
- Distribute these materials to the member municipalities for giving to each driver prior to the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.
- Provide written notice to representatives of employee organizations of the availability of this information.
- Require that each driver sign a statement certifying that he/she has received a copy of the FMCSA training materials. (See APPENDIX C)

10.0 RETENTION OF RECORDS

The Consortium member municipalities shall maintain their drug and alcohol records in a secure location with controlled access according to the following schedule:

One Year: Records of negative drug or alcohol tests.

Two Years: Records related to the collection process and employee training.

Three Years: All two year substance abuse background checks.

Five Years: Records of covered employees verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to the FMCSA.

Each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record.

10.1 ACCESS TO RECORDS

A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his/her drug or alcohol tests. There shall not be any contingent employee fee for this request.

The employing municipality shall:

- Permit access to all facilities utilized, data, covered employee records, and other program records compiled in complying with the requirements of these regulations to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.
- Disclose information related to the company's drug or alcohol testing related to an accident when a request is issued by the National Transportation Safety Board as part of an accident investigation.
- Make available a covered employee's records to a subsequent company or specifically identified person upon receipt of a written request from the covered employee.
- Disclose information pertaining to a covered employee to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under these regulations (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee).
- Obtain information on a covered employee's verified positive drug or alcohol tests within the preceding three years that are maintained by the covered employee's previous employer(s) pursuant to these regulations.

11.0 DESIGNATED EMPLOYER REPRESENTATIVE (DER)

Each Tompkins County Drug and Alcohol Testing Consortium member municipality will designate an employee or employees who will be responsible for managing the FMCSA substance abuse program. These individuals are called Designated Employee Representative (DER). Each member municipality is responsible to provide the DER contact information to Energetix and to provide updated information on DER contacts if/when it changes. The DER is designated to answer questions regarding this policy, the anti-drug and alcohol misuse program, and receive drug and alcohol test results.

12.0 MANAGEMENT INFORMATION SYSTEM

Energetix, on behalf of the Tompkins County Drug and Alcohol Testing Consortium member municipalities, will prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, and provide it when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the municipality or any of its drivers. The Management Information System (MIS) report will be prepared in accordance with 382.403.

APPENDIX A – GLOSSARY OF TERMS

Accident (FMCSA) An occurrence involving a commercial motor vehicle operating on a public road in which:

- (a) The accident involves the loss of human life; or
- (b) The accident involves the driver receiving a citation of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Adulterated Specimen. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)

Cancelled Test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Contractor. A person or organization that provides a safety-sensitive service for a recipient, sub-recipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered Employee. A person, including an applicant or transferee, who performs or will perform a Safety-Sensitive Function. This includes certain volunteers.

Dilute Specimen. A specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling Damage (FMCSA). Damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusions.

- a. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions.

- a. Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- b. Tire disablement without other damage even if no spare tire is available.
- c. Headlight or taillight damage.
- d. Damage to turn signals, horn, or windshield wipers that make them inoperative.

DOT The United States Department of Transportation.

Employer. A recipient or other entity that provides mass transportation service or which performs a Safety-Sensitive Function for such recipient or other entity. This term includes sub-recipients, operators, and contractors.

FMCSA. The Federal Motor Carrier Safety Administration

Invalid Drug Test. The result of a drug test of a urine specimen that contains an unidentified adulterant or an unidentified substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Performing a Safety-Sensitive Function. A Covered Employee is considered to be performing a Safety-Sensitive Function at any time in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Non-negative Drug Test. A test result found to be adulterated, substituted, invalid, or positive for drug/drug metabolites.

Primary Specimen. In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing.

Refuse to Submit. A refusal to take a drug test as set out in 49 CFR Section 40.191 or an alcohol test as set out in 49 CFR Section 40.261.

Safety-sensitive function (FMCSA). All time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- All time at company or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Service Agents. Any person or entity, other than an employee of the employer, who provides services specified in 49 CFR Part 40 to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, Breath Alcohol Technicians (BAT), laboratories, Medical Review Officer (MRO), and Substance Abuse Professional (SAP).

Split Specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted Specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

APPENDIX B – TESTING AND ADMINISTRATION

1. Third Party Administrator

Energetix Corp.
87 Saint Paul's Rd North
Hempstead, NY 11550
Tel: 516-505-0362 / 720-293-4543 fax

2. Tompkins County Drug and Alcohol Consortium Coordinator

Public Works Administrator
Tompkins County Public Works Dept.
170 Bostwick Rd.
Ithaca, NY 14850
Tel. 607-274-0302 / 607-272-8489 fax

3. MEDICAL REVIEW OFFICER

University Services
Dr. Ben Gerson
10551 Decatur Rd. Suite 200
Philadelphia, PA 19154
Tel. 215- 637- 6800

4.SAMHSA LABORATORY

Quest Diagnostics
400 Egypt Rd.
Norristown, PA 19403
Tel: 800-877-7484

5.SUBSTANCE ABUSE PROFESSIONAL (SAP)

Employee Network Inc.
1040 Vestal Parkway E.
Vestal, NY 13580
Tel. 800-364-4748

6. COLLECTION SITE

Guthrie Medical Center
1780 Hanshaw Rd.
Ithaca, NY 14850
Tel. 607-257-5858

APPENDIX C – CDL EMPLOYEE ACKNOWLEDGEMENT OF POLICY

Tompkins County Drug and Alcohol Testing Consortium

ACKNOWLEDGMENT OF RECEIPT OF COPY OF Tompkins County Drug and Alcohol Testing Consortium's Federal Motor Carrier Safety Administration (FMCSA) DRUG AND ALCOHOL POLICY

I, _____ hereby acknowledge that I have been given a copy of ***Tompkins County's Drug and Alcohol Testing Consortium's FMCSA Drug and Alcohol Policy***, and that my rights and responsibilities with respect to this Policy were explained to me.

Signature of the Employee

Dated: _____

APPENDIX D – RELEASE OF INFORMATION FORM – 49 CFR PART 40 DRUG AND ALCOHOL TESTING - (3 years FMCSA, 2 years all other DOT Modes)

Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:

Employee Printed or Typed Name:

Employee SS or ID Number:

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in *Section II-A* by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: _____ Date: _____

I-A.

New Employer Name:

Address:

Phone #: _____ Fax #: _____

Designated Employer Representative: _____

I-B.

Previous Employer Name:

Address:

Phone #: _____

Designated Employer Representative (if known):

Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:

II-A. In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing ~

- 1. Did the employee have alcohol tests with a result of 0.04 or higher? YES ___ NO ___
- 2. Did the employee have verified positive drug tests? YES ___ NO ___
- 3. Did the employee refuse to be tested? YES ___ NO ___
- 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? YES ___ NO ___
- 5. Did a previous employer report a drug and alcohol rule violation to you? YES ___ NO ___
- 6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? N/A ___ YES ___ NO ___

NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).

II-B.

Name of person providing information in Section II-A: _____

Title: _____

Phone #: _____

Date: _____

The Tompkins County Drug and Alcohol Testing Consortium (comprised of the Tompkins County Highway Division, Tompkins County Airport Division, the Towns of Caroline, Danby, Dryden, Enfield, Groton, Ithaca, Lansing, Newfield, and Ulysses, the Villages of Cayuga Heights, Dryden, Groton, and Trumansburg, and the City of Ithaca) requires successful completion of a urinalysis drug test as part of its pre-employment screening process. Additionally, the Consortium member municipalities require successful completion of a urinalysis drug test and/or breath alcohol test if there has been reasonable suspicion that an applicant or employee is under the influence of drugs and/or alcohol which adversely affects or could affect job performance. The Consortium member municipalities also require employees in occupations that have been designated as safety-sensitive (Commercial Driver's license required) by the Federal Regulations to undergo random urinalysis drug testing at the rate of 50% and alcohol testing at the rate of 25% of the total covered employees in the Consortium pool. Drug tests are conducted by an outside, professional laboratory. Further detail will be provided to applicants who successfully meet other criteria for employment

Because we are required to notify applicants of the intent to conduct urinalysis drug testing, we ask that you sign and date this notice.

I _____ have received, reviewed, and
(Printed Name of Applicant)

understand Tompkins County Drug and Alcohol Testing Consortium's drug and alcohol policy. Additionally, an authorized representative explained the Tompkins County's drug and alcohol policy to me.

Date

Applicant – Printed Name

Applicant – Signature

Date

Witness – Printed Name

Witness – Signature

